

**REMARKS**

In the Final Office Action<sup>1</sup>, the Examiner: rejected claims 27-35, 38, and 39 under 35 U.S.C. § 101 and rejected claims 1-9, 12-22, 25-35, 38, and 39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,751,190 B1 to Swallow ("Swallow") in view of U.S. Patent No. 7,000,121 B2 to Jarosz ("Jarosz").

By this Reply, Applicant has amended claims 1, 14, and 27; and added new claims 41-51. Claims 1-9, 12-22, 25-35, 38, and 39-51 are currently pending, with claims 1, 14, and 27 being independent. Applicant traverses the rejections set forth in the Final Office Action.

**I. The Rejection of Claims 27-35, 38, and 39 under 35 U.S.C. §101**

The Examiner rejected claims 27-35, 38, and 39 under 35 U.S.C. §101 alleging that the claims are directed to "a computer-readable device/carrier wave that includes data signals." Office Action at 4-5. Applicants respectfully disagree. To move prosecution forward, Applicant has amended the Specification to remove references to a carrier wave. Specification at ¶¶ 040, 045. Therefore, independent claim 27 can no longer be interpreted to include a carrier wave. Thus, claim 27 falls squarely within the ambit of § 101. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 101 rejection of independent claim 27. Moreover, because claims 28-35, 38, and 39, depend from independent claim 27, and were rejected under the same rationale as claim 27, Applicant respectfully requests reconsideration and

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<sup>1</sup> The Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

withdrawal of the § 101 rejection of these claims for at least the same reasons as explained above for claim 27.

II. **The Rejection of Claims 1-9, 12-22, 25-35, 38, and 39 under 35 U.S.C. §103(a) Based on Swallow and Jarosz**

The Examiner rejected claims 1-9, 12-22, 25-35, 38, and 39 under 35 U.S.C. § 103(a) as being unpatentable over Swallow in view of Jarosz. Applicant respectfully submits that the § 103(a) rejection of claims 1-9, 12-22, 25-35, 38, and 39 was improper because the Examiner failed to ascertain the differences between the claimed inventions and the prior art and resolve the level of ordinary skill in the pertinent art, as required by *Graham v. John Deere Co.* and M.P.E.P. § 2141. Instead, the Examiner merely stated what the cited references purportedly teach and that it would have been obvious to a person having ordinary skill in the art to modify the method disclosed by Swallow to include alleged teachings of Jarosz without resolving the level of ordinary skill in the art. Final Office Action at 6.

Furthermore, even if the *Graham* factual inquiries had been resolved, a *prima facie* case of obviousness has not been established with respect to claims 1-9, 12-22, 25-35, 38, and 39. For example, independent claim 1 as amended recites, among other things a “network connecting a first gateway and a second gateway,” “transmitting over the network an indication from a first node in the first gateway to a second node in the second gateway that a third node in the first gateway has failed,” and “reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node, to be transmitted over the network between a fourth node in the second gateway and the first node after the indication has been

received by the second node.” Swallow and Jarosz, taken alone or in combination, fail to teach or suggest the recited elements.

In the Final Office Action, the Examiner introduced a new rejection by refusing to give patentable weight to the features recited in the preamble of the independent claims. In the Office Action, the Examiner asserted for the first time that “[a] preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone.” Final Office Action at 3.

Although Applicant disagrees with the Examiner, Applicant has amended the claims to further clarify that the first node and the third node are components of the first gateway and the second node and the fourth node are components of the second gateway. Because these features are now recited in the body of the claim, the Examiner must accord them proper patentable weight.

Because Swallow and Jarosz, taken alone or in combination, fail to teach or suggest all of the elements of claim 1, as amended, the Applicant requests that Examiner withdraw the rejections of claim 1. Swallow arguably discloses “a network . . . including a transmit endpoint . . . , a receive endpoint . . . and [four] intermediate nodes [connected between the transmit endpoint and the receive endpoint].” Swallow, col. 3, lines 9-14; FIG. 1. As shown in FIG. 1 of Swallow, the network of Swallow differs from “a network connecting a first gateway and a second gateway,” wherein the first gateway includes “a first node” and “a third node,” and the second gateway includes “a second node” and “a fourth node,” as recited in

independent claim 1. In fact, nowhere does Swallow even teach or suggest a gateway comprising at least two nodes. Neither the endpoint nor the intermediate node of Swallow corresponds to a gateway comprising at least two nodes because neither the endpoint nor the intermediate node of Swallow comprises at least two nodes. In addition, Swallow does not teach any grouping of the endpoints and/or intermediate nodes to even suggest an entity comprising at least two intermediate nodes.

Because of this absence of a gateway comprising at least two nodes, the Examiner correctly observed that Swallow “does not explicitly teach transmitting over a network an indication from a first node to a second node that a third node has failed.” Final Office Action at 6. Although Swallow states that “[a]fter detection of a link failure the tunnel is repaired,” Swallow provides no teaching that such a detection occurs due to “an indication from a first node in a first gateway to a second node in a second gateway that a third node in the first gateway has failed.” In fact, Swallow fails to teach or suggest transmitting any indication between nodes that a node has failed. Swallow teaches that if an intermediate node A “discovers that it cannot forward data packets to intermediate node B 106 (FIG. 10) because of a communication link failure” then intermediate node A “establishes a bypass tunnel 128 through intermediate node\_D 120 to intermediate node\_C 108 using the same method for establishing the primary tunnel 126” as used for intermediate node B. Col. 8, lines 4-21 (emphasis added). Therefore, intermediate node A merely forwards the data packet to node D the same way as it would have to node B, without transmitting any indication of a communication link failure, as recited in claim 1.

Further, as Swallow does not teach or suggest a gateway comprising at least two nodes, Swallow also fails to teach or suggest “reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node, to be transmitted over the network between a fourth node in the second gateway and the first node after the indication has been received by the second node,” as recited in independent claim 1.

Jarosz fails to cure these deficiencies of Swallow. Instead, Jarosz discloses transmitting a heartbeat packet, which is merely a passive failure detection signal. Jarosz, col. 3, lines 52-64. Transmission of a heartbeat packet, by itself, does not indicate that a node has failed. Id. Only when a node fails to respond to a heartbeat signal within a predetermined time is the failure of the node detected. Id. Because Jarosz does not teach any signal that indicates the failure of the node, there is no transmission of an indication of failure in the system of Jarosz. Id. Thus, Jarosz fails to teach or suggest “transmitting over a network an indication that . . . [a] node has failed,” as recited in independent claim 1.

In addition, even assuming *arguendo* that a heartbeat packet constitutes an indication that a node has failed, which Applicant strongly disputes, Jarosz discloses transmitting a heartbeat packet from a client to a gateway in a client-gateway connection. Jarosz, col. 3, lines 52-64. Nowhere does Jarosz teach or suggest transmitting a heartbeat packet from a node of one gateway to a node of another gateway. Thus, even under the assumption, Jarosz fails to teach or suggest “transmitting over the network an indication from a first node in a first gateway to a

second node in a second gateway that a third node in the first gateway has failed,” as recited in independent claim 1.

Therefore, Applicant submits that the Examiner has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claim 1. Thus, the Examiner has failed to clearly articulate a reason why claim 1 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 1 and the rejection under 35 U.S.C. § 103(a) must be withdrawn.

Independent claims 14 and 27, although of different scope, recite features that are similar to the features recited in independent claim 1. For reasons at least similar to the reasons set forth above with respect to independent claim 1, a *prima facie* case of obviousness has not been established with respect to independent claims 14 and 27. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of independent claims 14 and 27 based on Swallow and Jaros.

Dependent claims 2-9, 12, 13, 15-22, 25, 26, 28-35, 38, and 39 are allowable at least by virtue of their dependence from an allowable independent claim. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of dependent claims 2-9, 12, 13, 15-22, 25, 26, 28-35, 38, and 39 based on Swallow and Jaros.

Swallow and Jaros, taken alone or in combination, further fail to teach or suggest all of the features of dependent claims 12, 25, and 38, including: “wherein transmitting over the network the indication further comprising using Internet Key

Exchange (IKE).” Swallow does not teach this feature, nor did the Examiner cite Swallow as describing this feature. Further, nowhere within Jarosz, including within the passage cited to by the Examiner in support of this rejection, does Jarosz teach or suggest “using Internet Key Exchange (IKE)” as required by these claims. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection of dependent claims 5, 18, and 31.

In view of the statements above, the Examiner has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claims 12, 25, and 38. Moreover, there is no motivation for one of ordinary skill in the art to modify the teachings of the references to achieve the claimed combinations. Thus, the Examiner has failed to clearly articulate a reason why claims 12, 25, and 38 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 12, 25, and 38 and the rejection under 35 U.S.C. § 103(a) must be withdrawn.

### **III. New Dependent Claims 40-51**

Newly added dependent claims 40-51 are allowable at least by virtue of their dependence from an allowable independent claim. Accordingly, Applicant requests prompt and timely allowance of these claims.

Further, new dependent claim 40 recites “wherein the first data is prioritized based upon message type and network destination.” New claims 44 and 48 recite similar features. Neither Swallow nor Jarosz, taken alone or in combination, teach this

feature of these claims. Accordingly, Applicants respectfully requests timely allowance of new claims 40, 44, and 48.

Newly added dependent claim 41 recites, "wherein the first data is reconfigured so that only the addresses of the first gateway and the second gateway are available to other users of the network." New claims 45 and 49 recite similar features. Neither Swallow nor Jarosz, taken alone or in combination, teach this feature of these claims. Accordingly, Applicants respectfully requests timely allowance of new claims 41, 45, and 49.

Similarly, newly added dependent claim 42 recites, "wherein the security protocol allows only the addresses of the first gateway and the second gateway to be available to other users of the network." New claims 43, 46, 47, 50, and 51 recite similar features. Neither Swallow nor Jarosz, taken alone or in combination, teach this feature of these claims. Accordingly, Applicants respectfully requests timely allowance of new claims 42, 43, 46, 47, 50, and 51.

#### **IV. Conclusion**

In view of the foregoing remarks, Applicant submits that this claimed invention is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests continued examination of this application, and the timely allowance of the pending claims.



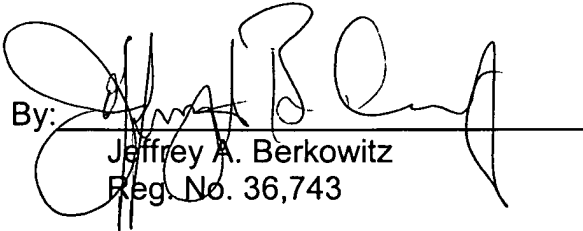
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

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By:



Jeffrey A. Berkowitz  
Reg. No. 36,743